

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

VISTO CORPORATION,

No. C-04-0651 EMC

Plaintiff,

**ORDER RE MEET AND CONFER RE
COVENANT NOT TO SUE**

v.

SPROQIT TECHNOLOGIES, INC.

Defendant.

The Court has received the parties' supplemental briefs regarding the covenant not to sue proffered by Visto. The parties have failed to engage fully in a meet and confer regarding the scope of Visto's covenant not to sue. The Court seeks clarification on a number of issues prior to determining justiciability under *Super Sack*.

Accordingly, the Court orders the parties to further meet and confer within four days of the date of this Order. The meet and confer must either be in person or by telephone. A written meet and confer will not be sufficient. The parties should meet and confer and reach a clarifying stipulation as to the following issues: (1) whether Sproqit's customers or licensees (or other authorized users) would be covered by the covenant; and (2) whether the covenant covers not only direct infringement by Sproqit but also indirect infringement (*i.e.*, contributory infringement and

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1 inducement). If the parties cannot agree upon a stipulation clarifying Visto's covenant not to sue,
2 Visto shall file a brief providing specific, clear, and succinct answers to the above two questions.
3 Said supplementary brief shall be filed within seven days of this Order.

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5 IT IS SO ORDERED.

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7 Dated: September 8, 2006

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EDWARD M. CHEN
United States Magistrate Judge